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7 FRANK FERRARA and CHARLIE FERRARA

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11 CORY SPENCER, an individual; DIANA
MILENA REED, an individual; and
12 COASTAL PROTECTION RANGERS,
INC., a California non-profit public
13 benefit corporation,

14 Plaintiff,

15 vs.

16 LUNADA BAY BOYS; THE
INDIVIDUAL MEMBERS OF THE
17 LUNADA BAY BOYS, including but not
limited to SANG LEE, BRANT
18 BLAKEMAN, ALAN JOHNSTON AKA
JALIAN JOHNSTON, MICHAEL RAE
19 PAPAYANS, ANGELO FERRARA,
FRANK FERRARA, CHARLIE
20 FERRARA; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
21 KEPLEY, in his representative capacity;
and DOES 1-10,

22 Defendants.
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) Case No. 2:16-cv-2129

) Judge: Hon. S. James Otero
) Ctrm: 10C

) Magistrate Judge:
) Hon. Rozella A. Oliver

) **JOINT STATUS REPORT**

) Complaint Filed: March 29, 2016
) Trial Date: December 12, 2017

24 Defendant FRANK FERRARA and Defendant CHARLIE FERRARA
25 (“Defendants” or “Frank Ferrara” or “Charlie Ferrara”) and Plaintiffs CORY
26 SPENCER, DIANA MILENA REED and COASTAL PROTECTION RANGERS,
27 INC. (collectively the “Parties”) and their respective counsel have conferred and
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1 jointly submit this Joint Status Report in accordance with the Court’s Order of
2 September 12, 2017.

3 **I. PROCEDURAL BACKGROUND**

4 WHEREAS on or about August 28, 2017, the Court issued a Minute Order
5 referring the following matter to Magistrate Judge Rozella A. Oliver: “(2) Issuance
6 of a Report and Recommendation regarding Plaintiffs’ Motion for Sanctions Against
7 Defendants Charlie Ferrara, Frank Ferrara, and Sang Lee.” The Minute Order
8 provides Magistrate Judge Rozella A. Oliver is authorized to consider all pending
9 discovery matters and conduct further hearings and proceedings as may be
10 appropriate or necessary. (Dkt. No. 435.)

11 WHEREAS on or about August 29, 2017, the Court issued a Minute Order
12 scheduling a Telephonic Status Conference for September 5, 2017 at 10:00 a.m.
13 (Dkt. No. 437.)

14 WHEREAS on or about September 5, 2017, the Court issued a Minute Order
15 indicating the Parties discussed the outstanding discovery disputes and the matters
16 referred to Magistrate Judge Oliver by District Judge Otero. (See Dkt. Nos. 443, pg.
17 1.) A further Telephonic Status Conference was scheduled for September 12, 2017,
18 at 10:00 a.m. (Dkt. No. 443, pg. 2.)

19 WHEREAS on or about September 12, 2017, the Court issued a Minute Order
20 regarding the Telephonic Hearing on Outstanding Discovery Disputes. Per the
21 Minute Order, Defendants Charlie and Frank Ferrara and Plaintiffs were Ordered to
22 file a joint status report by September 18, 2017 stating with particularity any
23 outstanding records and any lost or unrecoverable data or records. (Dkt. No. 452.)

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1 **II. STATUS OF OUTSTANDING RECORDS OR UNRECOVERABLE**
2 **DATA OR RECORDS**

3 a. *Defendant Frank Ferrara's Cellular Phone Records and Data*

4 With respect to Defendant Frank Ferrara, the records requested by Plaintiffs
5 but not produced are:

- 6 • The contents of nine text messages exchanged with Sang Lee.

7 Plaintiffs requested the production of text messages between Frank Ferrara and
8 any other Defendant from 2013 to the present date. Three text discussions
9 (consisting of nine total text messages) between Frank Ferrara and Defendant Sang
10 Lee took place on March 31, 2016, April 18, 2016 and July 29, 2016. According to
11 Frank Ferrara's forensic analyst, these messages are no longer stored on Frank
12 Ferrara's phone and are not recoverable.

13 Counsel for the Ferraras provides that the Ferraras' forensic analyst is
14 prepared to opine on the following: In performing the acquisition of information
15 from Frank Ferrara's cell phone, a comprehensive extraction was derived. Data
16 removed from the phone would have been extracted in connection with this work so
17 long as the data had not been overwritten. Data is not overwritten intentionally and
18 is not controlled by the mobile device user, but otherwise occurs arbitrarily in order
19 to make space for new data on the mobile device. The extraction report indicates the
20 nine text messages with Sang Lee were removed from Frank Ferrara's mobile device,
21 but there is no way to determine when this data was removed or whether or not Frank
22 Ferrara intentionally removed any of the subject data. Frank Ferrara's forensic
23 analyst has also confirmed that there is no way to determine when data that was not
24 recovered from the mobile device was removed or overwritten.

25 Frank Ferrara's counsel can make available all data and information utilized in
26 reaching this conclusion to any Parties who may wish to conduct further
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1 investigation. The native data from Frank Ferrara’s cell phone extraction has already
2 been produced to Plaintiffs.

3 *b. Defendant Charlie Ferrara’s Cellular Phone Records and Data*

4 With respect to Defendant Charlie Ferrara, the records requested but not yet
5 produced are:

- 6 • Cell phone billing records from December 15, 2015 through January 11,
7 2016;
- 8 • Records of text messages sent or received by Charlie Ferrara from
9 December 15, 2015 to February 24, 2016;
- 10 • Data stored on the mobile phone used by Charlie prior to August 15,
11 2016; and
- 12 • The contents of six text messages exchanged with Sang Lee.

13 Counsel for Charlie Ferrara has requested the billing records and text detail
14 from December 15, 2015 through February 24, 2016 from Charlie’s then cellular
15 service provider – Sprint. Counsel for the Ferraras is awaiting Sprint’s response
16 regarding its production of the same. Counsel for the Ferraras has provided a
17 document to the Plaintiffs which states Sprint’s document retention policy that
18 confirms these records may still exist, and a search is being performed for the tape
19 back-up for this period of time. Counsel for the Ferraras contacted Sprint regarding
20 the status of this search via written correspondence on September 1st, September 8th,
21 September 12th and September 13th. A Sprint representative has informed counsel for
22 the Ferraras that it can provide no estimated timeframe for completion and that the
23 requests are processed in the order received. Counsel for the Ferraras has made
24 diligent efforts to follow up with this Sprint representative to ensure our request is
25 processed as quickly as possible.

26 With respect to the production of data from Charlie Ferrara’s cell phone prior
27 to August 15, 2016, counsel for the Ferraras confirms that Charlie Ferrara does not
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1 have a cell phone available for extraction predating August 15, 2016 because he did
2 not retain possession of the cell phone he was using prior to August 15, 2016. At
3 that time, he transferred his cell service from Sprint to AT&T and traded his prior
4 phone in to AT&T. Charlie Ferrara asserts this occurred before he retained counsel
5 to defend him in this case. Charlie Ferrara asserts that, as a result, his cell phone data
6 prior to August 15, 2016 when he retained his new phone, is unavailable.

7 Plaintiffs assert that Charlie Ferrara testified at his deposition that he believed
8 he had obtained his new phone in April of 2016 and that he had his current phone for
9 a year as of his deposition on July 7, 2017. (Charlie Ferrara Depo. at 21:7-15.)
10 Counsel for the Ferraras asserts these estimates were inaccurate, and that facts
11 discovered since the deposition indicate that Charlie Ferrara obtained his new phone
12 in August of 2016. Plaintiffs further note that Mr. Ferrara testified that he was able
13 to transfer over all of his data, including photographs and text messages, from his old
14 phone to his new phone. (Charlie Ferrara Depo. at 21:18-22.)

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1 Plaintiffs requested the production of texts messages between Charlie Ferrara
2 and any other Defendant from 2013 to the present date. Two text discussions
3 (consisting of six total text messages) between Charlie Ferrara and Defendant Sang
4 Lee took place on June 30, 2016 and July 20, 2016. Because Charlie Ferrara does
5 not have a cell phone available for extraction predating August 15, 2016, and these
6 dates are encompassed within this time period, any data in relation to these six text
7 messages exchanged with Sang Lee are not available.

8 Dated: September 18, 2017

BREMER WHYTE BROWN & O’MEARA
LLP

11 By: /s/ Tiffany Bacon
12 Alison K. Hurley
13 Tiffany L. Bacon
14 Attorneys for Defendants
FRANK FERRARA and CHARLIE
FERRARA

15 DATED: September 18, 2017

HANSON BRIDGETT LLP

18 By: /s/ Samantha Wolff
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